

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

CASE NO. CR11-0120-JCC

10 Plaintiff,

ORDER

11 v.

12 GLEN THOMAS STEWART,

13 Defendant.
14

15 This matter comes before the Court on Defendant's motion for a reduction of his sentence
16 pursuant to *United States v. Smith*, 27 F.3d 649 (D.C. Cir. 1994) (Dkt. No. 1207). Having
17 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument
18 unnecessary and hereby DENIES the motion for the reasons explained herein.

19 **I. BACKGROUND**

20 Defendant was convicted of conspiracy to distribute cocaine and attempted possession of
21 cocaine with intent to distribute. (Dkt. No. 821.) On November 9, 2012, the Court sentenced
22 Defendant to 144 months of incarceration to be followed by five years of supervised release.
23 (Dkt. No. 901.) Defendant moves for a 13-month reduction in his sentence. (Dkt. No. 1207.)

24 **II. DISCUSSION**

25 "[A] district court does not have inherent power to resentence defendants at any time. Its
26 authority to do so must flow either from the court of appeals mandate . . . or from Federal Rule

1 of Criminal Procedure 35.” *United States v. Ceballos*, 671 F.3d 852, 854 (9th Cir. 2011) (quoting
2 *United States v. Handa*, 122 F.3d 690, 691 (9th Cir. 1997)); *see also* 18 U.S.C. §§ 3582(b), (c)
3 (stating grounds upon which a court may modify a term of imprisonment once it has been
4 imposed).

5 The D.C. Circuit’s decision in *Smith* concerned a downward departure that may be
6 applied at sentencing “where the defendant’s status as a deportable alien is likely to cause a
7 fortuitous increase in the severity of his sentence.” *Smith*, 27 F.3d at 655. The decision does not
8 provide courts with authority to modify a previously imposed sentence. No other ground
9 authorizing the Court to modify Defendant’s sentence presently exists. *See* 18 U.S.C. §§ 3582(b),
10 (c); Fed. R. Crim. P. 35. Thus, the Court lacks the jurisdiction to modify Defendant’s sentence in
11 the manner he has requested, and his motion is DENIED.

12 **III. CONCLUSION**

13 For the foregoing reasons, Defendant’s motion for a reduction in his sentence pursuant to
14 *Smith* (Dkt. No. 1207) is DENIED. Defendant’s pending motion for leave to file a reply and for
15 an extension of time to file a reply (Dkt. No. 1210) is DENIED.

16 DATED this 6th day of November 2018.

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20 John C. Coughenour
21 UNITED STATES DISTRICT JUDGE
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